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on February 7, 2011.

PATENT  
Docket No.: 021216-000610US

KILPATRICK TOWNSEND & STOCKTON LLP

By: /Jo Ann Honcik Dallara/  
Jo Ann Honcik Dallara

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

SMIDER and HERIOT

Application No.: 10/578,054

Filed: June 28, 2007

For: A NON-FLUORESCENT, NON-  
ENZYMATIC, CHEMILUMINESCENT  
AQUEOUS ASSAY

Customer No.: 20350

Confirmation No.: 4790

Examiner: Do, Pensee T.

Art Unit: 1641

COMMUNICATION RESPONSIVE TO  
RESTRICTION REQUIREMENT

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Commissioner:

The following is responsive to the Office Action mailed on October 7, 2010. A petition for a 3-month extension extending the period of response until February 7, 2011, accompanies this communication. Applicants do not believe that any additional fees are owed; however, should additional fees be owed, the Commissioner is authorized to deduct such a fee from the undersigned's Deposit Account No. 20-1430.

The Office Action restricts the pending claims into 2 groups. Group 1 is claims 1-15 drawn to a method, and Group II corresponds to system claims 16-65.

Applicants elect **Group II** corresponding to system claims 16-65.

The Office Action suggests that the Examiner intended to request an election of species but no specific instructions were provided.

In the event that the Examiner intended to request an election of a fluorophore and a chemical-energy transferring composition, applicants elect:

Fluorophore: xanthene from claim 22

Chemical-energy transferring composition: oxalate ester from claim 18

The elected species read on elected claims 16-25, 27-39, 41-53, and 54-65. The elected species read on non-elected claims 1-10 and 12-15.

The restriction requirement is traversed. The Examiner urges that the common feature of the claims can be reconstructed using a combination of references and is obvious. Obviousness of a combination of elements is not the standard for restriction or for lack of unity. Lack of unity requires that the common feature between putative groups lack novelty and therefore could not be the basis for patentability.

This is not the situation of the pending claims. Reconsideration of the restriction requirement is respectfully requested.

#### CONCLUSION

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

SMIDER and HERIOT  
Application No.: 10/578,054

PATENT

Respectfully submitted,

/Kenneth A. Weber/

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